

**Commuter Plan
For the Employees of
State of Delaware**

Plan Document

Original Effective Date: March 1, 2007

Amended and Restated Effective Date: January 1, 2019

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for the Employees of
State of Delaware**

Plan Document

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Section 1 Introduction

1.1 Establishment of the Plan

State of Delaware (the “Employer”) hereby creates an official plan document for the State of Delaware Commuter Plan (the “Plan”). The State of Delaware Commuter Plan was originally established March 1, 2007 (“Effective Date”).

1.2 Purpose of the Plan

This Plan allows an Employee to participate in the following Benefit Options:

- Van Pooling;
- Mass Transit; and
- Parking.

1.3 Legal Status

This Plan is intended to qualify as a “commuter plan” under the Code §132 and regulations issued thereunder and shall be interpreted to accomplish that objective.

1.4 Capitalized Terms

Many of the terms used in this document begin with a capital letter. These terms have special meaning under the Plan and are defined in the Glossary at the end of this document or in other relevant Sections. When reading the provisions of the Plan, please refer to the Glossary at the end of this document. Becoming familiar with the terms defined there will provide a better understanding of the procedures and Benefits described.

<p style="text-align: center;">Section 2 General Information</p>
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Name of the Cafeteria Plan	State of Delaware Commuter Plan
Name of Employer	State of Delaware
Address of Plan	97 Commerce Way, Suite 201, Dover, DE 19904
Plan Administrator	State of Delaware
Plan Sponsor and its IRS	State of Delaware
Employer Identification Number	516000279
Named Fiduciary & Agent for Service of Legal Process	State of Delaware
Type of Administration	The Plan is administered by the Plan Administrator with Benefits provided in accordance with the provisions of the State of Delaware Commuter Plan. It is not financed by an insurance company and Benefits are not guaranteed by a contract of insurance. State of Delaware may hire a third party to perform some of its administrative duties such as claim payments and enrollment.
Plan Effective Date	Commuter Plan originally effective March 1, 2007.
Claims Administrator	Application Software, Inc.
Plan Renewal Date	January 1
Internal Revenue Code and Other Federal Compliance	It is intended that this Plan meet all applicable requirements of the Internal Revenue Code of 1986 (the "Code") and other federal regulations. In the event of any conflict between this Plan and the Code or other federal regulations, the provisions of the Code and the federal regulations shall be deemed controlling, and any conflicting part of this Plan shall be deemed superseded to the extent of the conflict.
Discretionary Authority	<p>The Plan Administrator shall perform its duties as the Plan Administrator and in its sole discretion, shall determine the appropriate courses of action in light of the reason and purpose for which this Plan is established and maintained.</p> <p>In particular, the Plan Administrator shall have full and sole discretionary authority to interpret all Plan documents, and make all interpretive and factual determinations as to whether any individual is</p>

entitled to receive any Benefit under the terms of this Plan. Any construction of the terms of any Plan document and any determination of fact adopted by the Plan Administrator shall be final and legally binding on all parties. Any interpretation shall be subject to review only if it is arbitrary, capricious, or otherwise an abuse of discretion.

Any review of a final decision or action of the Plan Administrator shall be based only on such evidence presented to or considered by the Plan Administrator at the time it made the decision that is the subject of review. Accepting any Benefits or making any claim for Benefits under this Plan constitutes agreement with and consent to any decisions that the Plan Administrator makes in its sole discretion and further constitutes agreement to the limited standard and scope of review described by this Section.

<p style="text-align: center;">Section 3 Benefit Options and Method of Funding</p>

3.1 Benefits Offered

Each Employee may elect to participate in one or more of the following Benefits:

- Van Pooling;
- Mass Transit; and/or
- Parking.

Benefits under the Plan shall not be provided in the form of deferred Compensation.

3.2 Employer and Participant Contributions

- **Employer Contributions.** The Employer may, but is not required to, contribute to any of the Benefit Options.
- **Participant Contributions.** The Employer shall withhold from a Participant's Compensation by Salary Reduction on a pre-tax basis, an amount equal to the Contributions required for the Benefits elected by the Participant under the Salary Reduction Agreement. The maximum amount of Salary Reductions shall not exceed the aggregate cost of the Benefits elected.

3.3 Computing Salary Reduction Contributions

- **Salary Reductions per Pay Period.** The Participant's Salary Reduction is an amount equal to:
 - The monthly election for such Benefits payable on a per pay period basis;
 - An amount otherwise agreed upon between the Employer and the Participant; or
 - An amount deemed appropriate by the Plan Administrator. (Example: in the event of a shortage of reducible Compensation, amounts withheld and the Benefits to which Salary Reductions are applied may fluctuate.)
- **Salary Reductions Considered Employer Contributions for Certain Purposes.** Salary Reductions to pay for the Participant's share of the Contributions for Benefit Options elected for purposes of this Plan and the Code are considered Employer Contributions.

3.4 Funding This Plan

- **Benefits Paid from General Assets.** All of the amounts payable under this Plan shall be paid from the general assets of the Employer. Nothing herein will be construed to require the Employer nor the Plan Administrator to maintain any fund or to segregate any amount for the Participant's benefit. Neither the Participant, nor any other person, shall have any claim against, right to, or security or other interest in any fund, account or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which Benefits are paid. While

the Employer has complete responsibility for the payment of Benefits out of its general assets, it may hire a third party administrator to perform some of its administrative duties such as claims payments and enrollment.

- **Participant Bookkeeping Account.** While all Benefits are to be paid from the general assets of the Employer, the third party administrator will keep a bookkeeping account in the name of each Participant on behalf of the Employer. The bookkeeping account is used to track allocation and payment of Plan Benefits. On behalf of the Plan Administrator, the third party administrator will establish and maintain under each Participant's bookkeeping account a subaccount for each Benefit Option elected by each Participant.

Maximum Contributions. The maximum Contributions that may be made under this Plan for the Participant are the total of the maximums that may be elected for the benefits offered under the Plan as determined by the State of Delaware. Additionally, the maximum contributions can not exceed the maximum contribution determined by the federal government.

The current maximum contribution is \$265 per month for parking, and there is no minimum contribution limit. The current maximum contribution is \$265 per month for van pooling and mass transit (separate or combined), and there is no minimum contribution limit.

Section 4 Eligibility and Participation

4.1 Eligibility to Participate

An individual is eligible to participate in this Plan if such individual meets the definition of Employee as set forth in the Glossary.

Eligibility requirements to participate in the individual Benefit Options may vary from the eligibility requirements to participate in this Plan.

4.2 Required Salary Reduction Agreement

To participate in the Commuter Plan, an Employee must complete, sign and return to the Plan Administrator a Salary Reduction Agreement designated by the Plan Administrator. If an Employee fails to return a Salary Reduction Agreement, the Employee is deemed to have elected cash.

The Employee may begin participation on the 1st of the month following the date on which the Employee has met the Plan's eligibility requirements and submitted a Salary Reduction Agreement. The date an Employee's coverage begins depends on the date the Salary Reduction Agreement is received:

- If the Salary Reduction Agreement is received on or before the 15th of the month, the Employee's Coverage Period will begin on the 1st of the month following receipt of the agreement. (Example: Agreement is received on March 15th, the Employee's coverage period will begin April 1st.)
- If the Salary Reduction Agreement is received after the 15th of the month, the Employee's Coverage Period will begin on the 1st of the second month following receipt of the agreement. (Example: Agreement is received on March 16th, the Employee's coverage period will begin May 1st.)

4.3 Termination of Participation

A Participant will terminate participation in this Plan upon the earlier of:

- The end of the month in which the Employee's coverage period terminates due to the Employee's change of election to \$0 (Changes of Election are addressed in further detail in Section 4.4).
- The termination of this Plan; or
- The date on which the Employee ceases to be an Employee because of retirement, termination of employment, layoff, reduction in hours, or any other reason.

False or Fraudulent Claims. If ASIFlex believes that false or fraudulent claims have been submitted, ASIFlex will investigate the submitted claims and forward, with all investigational findings, to the State of Delaware's Statewide Benefits Office for further investigation. In the interim, ASIFlex will deny your claim and notify you that your account has been placed on hold until the situation has been resolved. The Statewide Benefits Office will make a decision as to whether your participation will be terminated in Pre-Tax Commuter plan. The State of Delaware has the authority to deny claims found to be false or fraudulent and to terminate your participation in the Pre-Tax Commuter plan in accordance with its discretionary duty as the Plan Administrator. The State of Delaware may take legal or disciplinary action against a member found to have committed fraud.

Termination of participation in this Plan will automatically revoke the Participant's participation in the elected Benefit Options, according to the terms thereof.

4.4 Change of Election

A Participant's election under the Plan may be changed on a monthly basis.

Effective Date of New Election. Participation will begin on the 1st of the month following the date on which the Employee has met the Plan's eligibility requirements and submitted a Salary Reduction Agreement. The date an Employee's coverage begins depends on the date the Salary Reduction Agreement is received:

- If the Salary Reduction Agreement is received on or before the 15th of the month, the Employee's Coverage Period will begin on the 1st of the month following receipt of the agreement. (Example: Agreement is received on March 15th, the Employee's coverage period will begin April 1st.)
- If the Salary Reduction Agreement is received after the 15th of the month, the Employee's Coverage Period will begin on the 1st of the second month following receipt of the agreement. (Example: Agreement is received on March 16th, the Employee's coverage period will begin May 1st.)

Changes. For subsequent Plan Years, the maximum and minimum dollar limit may be changed by the Plan Administrator or the federal government and shall be communicated to Employees through the Salary Reduction Agreement, Summary Plan Description, or other document.

4.5 Failure to Elect

If an Employee fails to complete, sign and return a Salary Reduction Agreement or fails to complete an election using the electronic system (if any) provided by the Employer within the time described in the Elections paragraphs as discussed immediately above, then the Employee will be deemed to have elected to receive his or her entire Compensation in cash.

Section 5 Commuter Benefit Options

5.1 Maximum Benefit for Van Pooling and Mass Transit Categories

An employee can enroll in both the Van Pooling program and the mass transit portion of the Commuter Plan. However, the maximum combined benefit cannot exceed \$265 per month.

5.2 Van Pooling

An Employee can enroll in the Van Pooling program and set aside up to \$265 per month. The funds will be deducted from each paycheck.

For purposes of Van Pooling only, the term "employee" **includes** individuals who are deemed temporary employees, casual employees, or employees hired short-term to meet specific needs of the Employer so long as such persons are on the Employer's W-2 payroll.

If the Employee's expenses change at any time, the Employee may change the deduction amount at any time by using the Claim Administrator's website to increase or decrease the deduction amount.

The Claims Administrator will automatically issue payments to the State of Delaware for each monthly charge the Employee incurs with Fleet Link.

5.3 Mass Transit

An Employee can enroll in the mass transit portion of the Commuter Plan and set aside up to \$265 per month. This benefit option will cause the Employee to receive a monthly voucher in the requested preferred denomination for expenses incurred traveling on Delaware Area Regional Transit (DART) or Southeastern Pennsylvania Transportation Authority (SEPTA).

The Claims Administrator will mail the voucher to the Employee's home each month.

If the voucher program is not available for the mass transit system that the Employee uses, the Employee can send reimbursement requests to the Claims Administrator and receive direct reimbursement to the Employee's checking or savings account.

The Employee will only be reimbursed up to the amount deducted from the Employee's paycheck. Any requests above available funds will be carried forward until the State takes your next contribution and will then be reimbursed automatically.

5.4 Parking

The Employee may set aside up to \$265 per month to pay for parking expenses incurred while the Employee is working.

The Claims Administrator will provide details about how reimbursement is received if the Employee uses a garage that participates in the State's Parking Program.

If a garage that the Employee is using is not a participating garage, the Employee must submit a reimbursement request form and appropriate documentation in order to receive reimbursement. The Claims Administrator processes claims within one business day of receipt and issues payments the same day that claims are processed.

The Employee will only be reimbursed up to the amount deducted from the Employee's paycheck. Any requests above available funds will be carried forward until the State takes your next contribution and will then be reimbursed automatically.

Section 6 Claims and Appeals

6.1 Claims Under the Plan

If a claim for reimbursement is wholly or partially denied, or if the Participant is denied a Benefit under the Plan regarding the Participant's coverage under the Plan, then the claims procedure described below will apply.

6.2 Notice from ASI

If a claim is denied in whole or in part, (ASI) will notify the Participant in writing within 30 days of the date that ASI received the claim. This time may be extended for an additional 15 days for matters beyond the control of the ASI, including cases where a claim is incomplete. ASI will provide written notice of any extension, including the reason(s) for the extension and the date a decision by ASI is expected to be made. When a claim is incomplete, the extension notice will also specifically describe the required information, and will allow the Participant at least 45 days from receipt of the notice to provide the specified information, and will have the effect of suspending the time for a decision on the claim until the specified information is provided. Notification of a denied claim will include:

- The specific reasons for the denial;
- The specific Plan provisions on which the denial is based;
- A description of any additional material or information necessary to validate the claim and an explanation of why such material or information is necessary; and
- Appropriate information on the steps to take to appeal ASI's adverse benefits determination, including the right to submit written comments and have them considered, and the right to review, upon request and at no charge, relevant documents and other information, and the right to file suit, where applicable, with respect to any adverse benefits determination after the final appeal of the claim.

6.3 First Level Appeal to ASI

If a claim is denied in whole or in part, the Participant, or the Participant's authorized representative, may request a review of the adverse benefits determination upon written application to ASI. The Participant, or the Participant's authorized representative, may request access to all relevant documents in order to evaluate whether to request review of an adverse benefits determination and, if review is requested, to prepare for such review.

An appeal of an adverse benefits determination must be made in writing within 30 days upon receipt of the notice that the claim was denied. If an appeal is not made within the above referenced timeframe all rights to appeal the adverse benefits determination and to file suit in court will be forfeited. A written appeal should include: additional documents, written comments, and any other information in support of the appeal. The review of the adverse benefits determination will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.

6.4 ASI Action on Appeal

ASI, within a reasonable time, but no later than 60 days after receipt of the request for review, will decide the appeal. ASI may, in its discretion, hold a hearing on the denied claim. If the decision on review affirms the initial denial of the claim, a notice will be provided which sets forth:

- The specific reasons for the decision on review;
- The specific Plan provisions on which the decision is based;
- A statement regarding the right to review, upon request and at no charge, relevant documents and other information. If an “internal rule, guideline, protocol, or other similar criterion” is relied on in making the decision on review, a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge upon request; and
- Appropriate information on the steps to take to appeal ASI’s adverse benefits determination, including the right to submit written comments and have them considered, and the right to review, upon request and at no charge, relevant documents and other information, and the right to file suit, where applicable, with respect to any adverse benefits determination after the final appeal of the claim.

6.5 Second Level Appeal to the Statewide Benefits Office

Participant may file an appeal of the denial in writing to the Statewide Benefits Office within 20 days of the postmark date of the notice of denial of the first level appeal.

Appeals Administrator
RE: APPEAL
Statewide Benefits Office
97 Commerce Way, Suite 201
Dover, DE 19904

Appeal must contain how the employee may be contacted (mailing address, telephone number, etc.), a written summary of events, applicable claims, and any additional documentation participant desires to provide to support his/her position.

The Appeals Administrator from the Statewide Benefits Office (or his/her designee) will conduct an internal review of the appeal and provide a written notice of the decision to the participant and the third party administrator within 30 days of receiving the appeal.

6.6 Third and Final Level Appeal to State Employee Benefits Committee

If the initial denial is upheld, the Participant may file a written appeal to the State Employee Benefits Committee (SEBC) within 20 days of the postmark date of the notice of denial from the Statewide Benefits Office.

Co-Chair, State Employee Benefits Committee (SEBC)
RE: Appeal
Department of Human Resources
Haslet Armory, Second Floor
122 Martin Luther King Blvd, South
Dover, DE 19901

The SEBC receives the appeal and:

- Identifies a Hearing Officer (Division Director, Statewide Benefits Office). The Hearing Officer conducts a hearing and submits a report to the SEBC within 60 days of the date of the hearing. The SEBC accepts or modifies the report, and notice of the decision is postmarked to the participant within 60 days; OR
- Hears the appeal, and notice of the decision is postmarked to the participant within 60 days of the hearing.

6.7 Appeal Procedure for Eligibility or Salary Reduction Issues

If the Participant is denied a Benefit under the Plan due to questions regarding the Participant's eligibility or entitlement for coverage under the Plan or regarding the amount the Participant owes, the Participant may request a review upon written application to the Statewide Benefits Office.

The Participant, or the Participant's authorized representative, may request access to all relevant documents in order to evaluate whether to request review of an adverse benefits determination and if review is requested, to prepare for such review.

An appeal of an adverse benefits determination must be made in writing within 20 days upon receipt of the notice that the claim was denied. If an appeal is not made within the above referenced timeframe all rights to appeal the adverse benefits determination will be forfeited. A written appeal should include: additional documents, written comments, and any other information in support of the appeal. The review of the adverse benefits determination will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.

If the decision on review affirms the Plan Administrator's initial denial, the Participant may request a review of the adverse appeal determination upon written application to the State Employee Benefits Committee. The Third and Final Level of Appeals Procedures described above will apply.

<p style="text-align: center;">Section 7 Plan Administration</p>

7.1 Plan Administrator

The administration of this Plan shall be under the supervision of the Plan Administrator. It is the principal duty of the Plan Administrator to see that this Plan is carried out in accordance with the terms of the Plan document and for the exclusive benefit of persons entitled to participate in this Plan and without discrimination among them.

7.2 Powers of the Plan Administrator

The Plan Administrator shall have such powers and duties as may be necessary or appropriate to discharge its functions hereunder. The Plan Administrator shall have final discretionary authority to make such decisions and all such determinations shall be final, conclusive and binding. The Plan Administrator shall have the exclusive right to interpret the Plan and to decide all matters hereunder. The Plan Administrator shall have the following discretionary authority:

- To construe and interpret this Plan, including all possible ambiguities, inconsistencies and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of Benefits under this Plan (provided that the Committee shall exercise such exclusive power with respect to an appeal of a claim);
- To prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Plan;
- To prepare and distribute information explaining this Plan and the Benefits under this Plan in such manner as the Plan Administrator determines to be appropriate;
- To request and receive from all Employees and Participants such information as the Plan Administrator shall from time to time determine to be necessary for the proper administration of this Plan;
- To furnish each Employee and Participant with such reports in relation to the administration of this Plan as the Plan Administrator determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a Participant's Compensation has been reduced in order to provide Benefits under this Plan;
- To receive, review and keep on file such reports and information concerning the Benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper;
- To appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and Benefit consultants;
- To sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;
- To require such evidence as deemed necessary to decide any claim or appeal; and

- To maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

7.3 Reliance on Participant, Tables, etc.

The Plan Administrator may rely upon the Participant's direction, information or election as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by the Participant. The Plan Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Plan Administrator.

7.4 Outside Assistance

The Plan Administrator may employ such counsel, accountants, claims administrators, consultants, actuaries and other person or persons as the Plan Administrator shall deem advisable. The Plan shall pay the compensation of such counsel, accountants, and other person or persons and any other reasonable expenses incurred by the Plan Administrator in the administration of the Plan. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligations of the Employer and the Plan Administrator.

7.5 Fiduciary Liability

To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act except for its own gross negligence, misconduct or willful breach of this Plan.

7.6 Compensation of Plan Administrator

Unless otherwise determined by the Employer and permitted by law, any Plan Administrator that is also an employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of their duties shall be paid by the Employer.

7.7 Inability to Locate Payee

If the Plan Administrator is unable to make payment to the Participant or another person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of the Participant or such other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to the Participant or such other person shall be forfeited one year after the date any such payment first became due.

7.8 Effect of Mistake

In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the Participant's account, or the amount of Benefits paid or to be paid to the Participant or another person, the Plan Administrator shall, to the extent administratively possible and otherwise permissible under Code §132 or the regulations issued thereunder, correct by making the appropriate adjustments of such amounts as necessary to credit the Participant's account or such other person's account or withhold any amount due to the Plan or the Employer from Compensation paid by the Employer.

<p style="text-align: center;">Section 8 Amendment or Termination of the Plan</p>
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8.1 Permanency

While the Employer fully expects that this Plan will continue indefinitely, due to unforeseen, future business contingencies, permanency of the Plan will be subject to the Employer's right to amend or terminate the Plan, as provided in the paragraphs below.

8.2 Right to Amend

The Employer reserves the right to merge or consolidate the Plan and to make any amendment or restatement to the Plan from time-to-time, including those which are retroactive in effect. Such amendments may be applicable to any Participant.

Any amendment or restatement shall be deemed to be duly executed by the Employer when signed by the Chair of the State of Delaware's State Employee Benefits Committee (SEBC), and attested by its Secretary.

8.3 Right to Terminate

The Employer reserves the right to discontinue or terminate the Plan in whole or in part at any time without prejudice. This Plan may be terminated by the Employer. This Plan also shall terminate automatically if the Employer is legally dissolved, makes a general assignment for the benefit of its creditors, files for liquidation under the Bankruptcy Code, merges or consolidates with any other entity and it is not the surviving entity, or if it sells or transfers substantially all of its assets, unless the Employer's successor in interest agrees to assume the liabilities under this Plan as to the Participant and Dependents.

<p style="text-align: center;">Section 9 General Provisions</p>
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9.1 Expenses

All reasonable expenses incurred in administering the Plan are currently paid by forfeitures and then by the Employer.

9.2 No Contract of Employment

Nothing contained in the Plan shall be construed as a contract of employment with the Employer or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any Employee, with or without cause.

9.3 Compliance with Federal Mandates

To the extent applicable for each Benefit Option, the Plan will provide Benefits in accordance with the requirements of all federal mandates. This Plan shall be construed, operated and administered accordingly, and in the event of any conflict between any part, clause or provision of this Plan and the Code, the provisions of the Code shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

9.4 Verification

The Plan Administrator shall be entitled to require reasonable information to verify any claim or the status of any person as an Employee. If the Participant does not supply the requested information within the applicable time limits or provide a release for such information, the Participant will not be entitled to Benefits under the Plan.

9.5 Limitation of Rights

Nothing appearing in or done pursuant to the Plan shall be held or construed:

- To give any person any legal or equitable right against the Employer, any of its employees, or persons connected therewith, except as provided by law; or
- To give any person any legal or equitable right to any assets of the Plan or any related trust, except as expressly provide herein or as provided by law.

9.6 Non-Assignability of Rights

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to the extent required by law.

9.7 Governing Law

This Plan is intended to be construed, and all rights and duties hereunder are governed, in accordance with the laws of the State of Delaware, except to the extent such laws are preempted by any federal law.

9.8 Severability

If any provision of the Plan is held invalid or unenforceable, its validity or unenforceability shall not affect any other provision of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

9.9 Captions

The captions contained herein are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of the Plan nor in any way shall affect the Plan or the construction of any provision thereof.

9.10 Federal Tax Disclaimer

To ensure compliance with requirements imposed by the IRS to the extent this Plan Document or any Schedule contains advice relating to a federal tax issue, it is not intended or written to be used, and it may not be used, for the purpose of avoiding any penalties that may be imposed on the Participant or any other person or entity under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed herein.

9.11 No Guarantee of Tax Consequences

Neither the Plan Administrator nor the Employer make any commitment or guarantee that any amounts paid to the Participant or for the Participant's benefit under this Plan will be excludable from the Participant's gross income for federal, state or local income tax purposes. It shall be the Participant's obligation to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state and local income tax purposes, and to notify the Plan Administrator if the Participant has any reason to believe that such payment is not so excludable.

9.12 Indemnification of Employer

If the Participant receives one or more payments or reimbursements under this Plan on a pre-tax Salary Reduction basis, and such payments do not qualify for such treatment under the Code, the Participant shall indemnify and reimburse the Employer for any liability the Employer may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

Glossary

Capitalized terms used in the Plan have the following meanings:

Benefit or Benefits means the Benefit Options offered under the Plan.

Benefit Option means a qualified transportation benefit under Code §132 that is offered under this Plan.

Commuter Plan means the State of Delaware Commuter Plan as set forth herein and as amended from time to time.

Code means the Internal Revenue Code of 1986, as amended.

Compensation means the wages or salary paid to an Employee by the Employer, determined prior to: any Salary Reduction election under this Plan; any Salary Reduction election under any other cafeteria plan; any compensation reduction under any Code §132(f)(4) plan; and any salary deferral elections under any Code §§401(k), 408(k) or 457(b) Plan or arrangement.

Contribution means the amount contributed to pay for the cost of Benefits as calculated under the Benefit Options.

Effective Date: The original effective date of this Plan is March 1, 2007. This plan document shall be effective as of January 1, 2016.

Employee means an individual who is benefit eligible; and has been employed by the Employer.

The following classes of employees cannot participate in the State of Delaware Commuter Plan:

- Leased employees (as defined by §414 (n) of the Code);
- Contract workers and independent contractors;
- Temporary employees, casual employees, and employees hired short-term to meet specific needs of the Employer whether or not such persons are on the Employer's W-2 payroll;
 - **Exception for Van Pooling Only:** Temporary employees, casual employees, or employees hired short-term to meet specific needs of the Employer if such persons are on the Employer's W-2 payroll are **not excluded** from participating in the **Van Pooling** benefit as detailed in **Section 5.2**.
- Individuals paid by a temporary or other employment or staffing agency;
- Self-employed individuals; and
- Any more than 2% shareholders of S corporations.

Employer means State of Delaware.

Participant means a person who is an Employee and who is participating in this Plan in accordance with the provisions of the Eligibility and Participation Section. Participants include: (a) those that elect to receive Benefits under this Plan, and enroll for Salary Reductions to pay for such Benefits; and (b) those that elect instead to receive their full salary in cash and have not elected to participate in the Commuter Plan.

Period of Coverage means the consecutive months during which the Employee participates in the Commuter Plan contributes through a salary reduction.

Plan means the State of Delaware Commuter Plan, as set forth herein and as amended from time to time.

Plan Administrator means State of Delaware.

Salary Reduction means the amount by which the Participant's Compensation is reduced and applied by the Employer under this Plan to pay for one or more of the Benefit Options.

Salary Reduction Agreement means the agreement, form(s) or Internet web site, which Employees use to elect one or more Benefit Options. The agreement and/or forms spell out the procedures used for allowing an Employee to participate in this Plan and will allow the Employee to elect Salary Reductions to pay for any Benefit Options offered under this Plan.

<p style="text-align: center;">Appendix A Exclusions—Expenses That Are Not Reimbursable</p>

The Plan Document contains the general rules governing what expenses are reimbursable under the Commuter Plan. This Appendix A, as referenced in the Plan Document, specifies certain expenses that are excluded under this Plan with respect to reimbursement from the Commuter Plan -- that is, expenses that are *not* reimbursable.

- Any expenses that are not related to transportation used by the Employee to travel to the Employee's work location or mass transit location.
- Any expenses that are not supported by third-party receipts.